



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2010

Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2010-06501

Dear Ms. Donley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 378023.

The Lewisville Independent School District (the "district"), which you represent, received a request for information pertaining to the suspension, termination, or resignation of six named individuals.¹ You state the district has released some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, 552.130, 552.135, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The district has the burden of providing relevant facts and documents to show that the section 552.103 exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103.

This office has long held that for the purposes of section 552.103, "litigation" includes "contested cases" conducted in a quasi-judicial forum. *See* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). Likewise, "contested cases" conducted under the Texas Administrative Procedure Act, chapter 2001 of the Government Code, constitute "litigation" for purposes of section 552.103. *See* Open Records Decision Nos. 588 (1991) (concerning former State Board of Insurance proceeding), 301 (1982) (concerning hearing before Public Utilities Commission). In determining whether an administrative proceeding is conducted in a quasi-judicial forum, this office has focused on the following factors: (1) whether the dispute is, for all practical purposes, litigated in an administrative proceeding where (a) discovery takes place, (b) evidence is heard, (c) factual questions are resolved, and (d) a record is made; and (2) whether the proceeding is an adjudicative forum of first jurisdiction, *i.e.*, whether judicial review of the proceeding in district court is an appellate review and not the forum for resolving a controversy on the basis of evidence. *See* Open Records Decision No. 588 (1991).

You state the requestor filed a grievance with the district. You explain that grievances filed with the district are "litigation" in that the district follows administrative procedures in handling such disputes. You indicate the district's policy includes a multi-level process wherein administrators hear the grievance at Levels I and II, and the district's board of trustees hears the grievance if the grievant appeals to Level III. You explain that during these hearings, the grievant is allowed to be represented by counsel and present evidence. You state the grievant must complete the grievance process before she can appeal to a court of competent jurisdiction. Based on your representations, we find you have demonstrated that the district's administrative procedure for disputes is conducted in a quasi-judicial forum, and thus, constitutes litigation for purposes of section 552.103. You state the requestor filed her initial grievance on December 16, 2009. Thus, we determine that the district was involved in the pending litigation at the time it received the instant request for information. You state the requestor alleges in her Level I grievance that she was terminated due to gender discrimination, while in her Level II grievances the requestor claims she was not treated in

the same manner as male employees. You claim the requested information relates to the grievances "as the requestor has asked for documentation pertaining to infractions that led to the termination, resignation, or suspension of six male [d]istrict employees[.]" in an attempt to show disparate treatment based on gender. Based upon your representations and our review, we conclude section 552.103 is applicable to the submitted information.

We note that the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, when the opposing party has seen or had access to information relating to litigation, through discovery or otherwise, there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the requestor has already seen or had access to some of the information at issue. However, the requestor only saw or had access to this information in the usual scope of her employment by the district. Such information is not considered to have been obtained by the opposing party to litigation. Therefore, the submitted information may be withheld under section 552.103.² We note that the applicability of this exception ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

²As our ruling is dispositive, we need not address your remaining arguments.

Ref: ID# 378023

Enc. Submitted documents

c: Requestor
(w/o enclosures)